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Bail in the State Courts—A Field Study and Report

Bail practices and procedures throughout the country are far from uniform. In this study information pertaining to bail obtained in the recent American Bar Foundation study on defense of the poor in criminal cases is categorized and analyzed. Admittedly the obvious disparities in practices may be partly explained by regional or local factors. The author argues however that in certain instances these disparities are sufficiently great to raise serious questions under the equal protection clause of the fourteenth amendment, the excessive bail provisions of the eighth amendment, and possibly various state constitutional provisions.

Lee Silverstein*

The recent American Bar Foundation study on defense of the poor in criminal cases gathered much information about state court bail practices. The study consisted chiefly of an audit in 1963 of local practices in approximately 300 sample counties chosen from every state and the District of Columbia.¹ A docket study was made of 11,000 felony prosecutions commenced in 1962 in 190 of the sample counties.² The studies revealed wide disparities in the use of bail tests to determine eligibility for appointed counsel, in the use of bail schedules for certain crimes, and in the amounts of bail set for such crimes. The disparities are serious enough to warrant an inquiry whether either the equal protection clause of the fourteenth amendment or the prohibition against excessive bail in the eighth amendment is being violated.³

*Research attorney, American Bar Foundation. The opinions expressed are the author's and do not necessarily represent the views of the American Bar Foundation.

1. See SILVERSTEIN, DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS (1965) for a report of the project. A list of the sample counties and an explanation of the research methods used may be found *id.* at 155-81. The material in this article is drawn chiefly from the answers obtained to question 10, Form I, *id.* at 195-96, and from questions 1, 2, 3, 10, 16, 17, 18, and 20, of Form II, *id.* at 207-09.

2. *Id.* at 155-69.

3. See Foote, *The Coming Constitutional Crisis in Bail*, 113 U. PA. L. REV. 959, 1125, 1126-64 (1965), where additional constitutional questions are raised.

This article will report the Foundation's findings and recommend certain reforms in present bail practices.

I. PRESENT PRACTICES

The study revealed that a number of courts use a "bail test" in deciding whether a felony defendant is eligible for court provided legal assistance. In 21 sample counties, located in 11 states, release on bail precluded such assistance. In another 40 counties in 25 states release on bail was a primary, though not the sole, test of eligibility.⁴ To the extent that these practices prevent a poor person from having counsel, it is doubtful that they meet constitutional due process and equal protection requirements.⁵ This point is discussed further in Part II below.

A. THE AMOUNT OF BAIL ORIGINALLY SET

The survey showed that the amount of bail for certain crimes varies greatly among counties within a state as well as between states. Even allowing for local differences in the cost of living, the disparities are still great. Table 1 shows the probable bail for a local resident charged with forgery or issuing a worthless check and is representative of bail amounts.⁶

It is hard to explain why many counties greatly exceed the most typical figure of 1000 dollars, considering the disadvantages accompanying high bail. As fewer defendants can make bail, the jail is both more crowded and more costly to operate. Defendants who do make bond have fewer resources remaining to finance their defense, and the quality of their legal representation may thus be impaired. Bondsmen and bonding companies have fewer customers but potentially larger profits on each one. However, if a customer jumps high bail, the bondsman is liable for a larger forfeiture. Everyone is disadvantaged by a high bail county — the defendant, his family, the bondsman, and the public. The practice of setting high bail suggests two pertinent questions: (1) why is high bail needed? (2) what constitutes a violation of the eighth amendment's prohibition against excessive bail?

B. HOW THE AMOUNT OF BAIL IS DETERMINED

The study revealed two systems for setting bail: the magistrate

4. SILVERSTEIN, *op. cit. supra* note 1, at 107; see generally *id.* at 106-08.

5. Cf. Foote, *supra* note 3, at 1151-64 (suggests equal protection theory of *Griffin v. Illinois*, 351 U.S. 12 (1956), might be extended to bail).

6. This table is based on material in the Appendix to this article.

Table 1. Typical bail for forgery or similar crime, 1963

(Figure in parentheses is county population in thousands,
1960 census.)

Allegany, Md. (84), Rock, Wis. (114)	\$ 500
Princess Anne, Va. (77)	500 or \$1000
Russell, Ala. (46)	750
Allegheny, Pa. (1628)	750 cash or 1000 property
Putnam, Mo. (7), Thomas, Ga. (34), Butler, Kan. (38), Laramie, Wyo. (60), McDowell, W. Va. (71), Saginaw, Mich. (191), Sedgwick, Kan. (343), Davidson, Tenn. (400), Summit, Ohio (514), Hennepin, Minn. (843), Harris, Texas (1243), Cook, Ill. (5130)	1000
Marion, Ind. (698)	1000 or 1500
Bristol City, Va. (17), Utah, Utah (107)	1000 cash or 2000 property
Tulsa, Okla. (346)	1000 to 3000
Piatt, Ill. (15), Kanawha, W. Va. (253)	1500
Henry, Ind. (49), Alachua, Fla. (74), Jefferson, Colo. (128)	2000
McKenzie, N.D. (7), Kitsap, Wash. (84), Ramsey, Minn. (423), Jackson, Mo. (623), Essex, N.J. (924)	2500
Porter, Ind. (72), Yakima, Wash. (145), Lake, Ind. (513), King, Wash. (935)	3000
Miller, Mo. (14), Nez Perce, Idaho (27)	5000

system and the prosecutor system, depending on the dominant official. Under the magistrate system the committing magistrate decides the amount of bail, considering such factors as the crime charged, the alleged circumstances of the offense, the previous criminal record of the accused, and whether he has a local residence or other ties to the community. This system is most often used where the magistrate has legal training. A bail schedule is less likely to be used under the magistrate system than under the prosecutor system, and when it is used, it serves only as a general guide and is not regularly followed.

Under the prosecutor system the amount of bail is largely, or even solely, determined by the prosecutor. In some localities bail is shown on the arrest warrant according to a prearranged schedule. Such schedules are more common for misdemeanors than

felonies. In other localities the prosecutor or his deputy recommends the amount of bail at the arraignment. This recommendation is usually followed, especially if the magistrate is a layman. Where a prosecutor's information replaces an indictment, the amount of bail may be endorsed on the information or on the arrest warrant. The prosecutor system affords greater opportunity for excessive bail, hence the trial court of general criminal jurisdiction should exercise supervision so as to prevent abuse.

C. WHO THE BONDSMEN ARE

Most bondsmen in the large cities are full-time representatives of surety companies, but in rural areas professional bondsmen are rarely found. Most rural sureties are relatives, friends, or employers. In middle-sized communities one finds the big city type professional bondsman, the rural type personal surety, and, in addition, the local man with real estate holdings who serves as a professional bondsman. Personal sureties are occasionally found in large cities, especially where cash bond is required for misdemeanors.

D. THE PROPORTION OF DEFENDANTS RELEASED ON BAIL

For purposes of presentation the sample counties⁷ have been divided into three population groups: large (over 400,000), medium (100,000 to 400,000), and small (under 100,000). Tables 2 to 4 show the number of cases in the sample from each county, the percentage of defendants released on bail, and the original amount of bail.

Table 2 reveals a striking disparity among large counties as to the percentage of defendants released on bail. (Hereafter each large county is identified by its chief city, although the data was drawn from the county as a whole.) The figures range from lows of 25 per cent for Chicago, 29 per cent for Minneapolis, and 30 per cent for Kansas City, to highs of 62 per cent for Honolulu, 70 per cent for Louisville, and 86 per cent for Philadelphia. The median percentage of defendants released on bail for all the large counties was 47 per cent.

A comparable range of variations was reported for medium and small counties, with medians of 49 per cent and 39 per cent re-

7. The term "county" includes parishes in Louisiana, judicial districts in Alaska, independent cities in Virginia, Maryland, and Missouri, and the District of Columbia.

spectively. It is quite clear that the variation is much greater within each of the three classes of counties than from one class to another. Nevertheless, in a considerable number of small counties the percentage of defendants released on bail was very low. In 9 of the 40 counties in this class the proportion was from 7 per cent to 24 per cent, which is below the low of 25 per cent in large counties and 29 per cent in medium size counties. This finding is not surprising considering the information contained in Table 1 showing that some of the smallest counties require the highest bail.

Several factors concur to permit excessive bail in rural counties. Judicial supervision may be light, especially if the district judge or circuit judge must divide his energies among several counties. In almost all states except those in the Southeast, the rural prosecutor serves only his home county, and is thus in a position to play a prominent role in setting bail. Moreover, the committing magistrate is likely to be a lay justice of the peace, more subject to prosecutor or police influence than would a legally trained magistrate. Because the number of felony cases in any one county is usually small, the public is often unaware of the problem. The relative isolation and provincialism of many rural counties may also be a factor. Finally, the absence of organized public defender offices may reduce the chances that any particular local system will be challenged.

Tables 2 to 4 also reveal tremendous variations in the amount at which bail is set.⁸ For example, in Chicago 77 per cent of the defendants had bail set at 5000 dollars or more, including 35 per cent having bail set at 10,000 dollars or more; while at the other extreme, in Philadelphia, 83 per cent of the defendants had bail under 3000 dollars, and only 1 per cent had bail of 5000 dollars or more. In Los Angeles, where the proportion of defendants released on bond is near the large county median, 81 per cent of the defendants had bail set at less than 3000 dollars, while 16 per cent had bail at 3000 dollars or more, including 12 per cent at 5000 dollars or more. These representative examples provide considerable evidence to support the common sense notion that the amount of bail will largely determine the percentage of defendants who make bail.

However, the figures for medium and small counties do not

8. Percentages in all charts and tables are recorded to the nearest whole number hence the columns do not always total 100 percent.

Table 2. Original amount of bail set in felony cases,
large counties, 1962*

Percentage of total defendants by amount of bail set

State, County (city)	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 or more	No bail set†	Own recognizance
Cal., Los Angeles	252	41	0	1	22	58	4	7	2	3	2	1
Cal., San Francisco	150	43	0	1	12	72	2	11	1	1	1	0
Colo., Denver	50	55	0	0	4	60	2	12	12	8	2	0
Conn., Hartford	50	61	6	6	10	41	8	20	2	2	4	0
D.C. (Washington)	110	37	0	0	2	62	6	15	4	1	9	0
Fla., Duval (Jacksonville)	66	49	14	2	24	43	0	9	3	0	5	0
Hawaii, Honolulu	50	62	2	0	34	50	4	2	0	0	6	2
Ill., Cook (Chicago)	249	25	0	0	1	11	2	42	32	3	9	0
Ind., Marion (Indianapolis)	105	34	0	0	4	44	21	18	5	4	5	0
Ky., Jefferson (Louisville)	103	70	11	18	34	27	0	5	1	0	3	0
La., Orleans (New Orleans)	218	56	0	20	22	40	3	7	4	2	1	0
Mich., Wayne (Detroit only)	188	52	1	7	37	41	6	6	3	0	0	0
Mich., Wayne (Outside Detroit)	43	74	24	5	26	32	3	5	0	0	3	3
Minn., Hennepin (Minneapolis)	80	29	1	0	5	53	15	13	0	1	8	5
Mo., Jackson (Kansas City)	80	30	1	0	0	53	17	16	8	1	4	0
Mo., St. Louis City	144	40	0	0	0	82	2	8	3	1	4	0
N.J., Union (Elizabeth)	78	55	0	9	37	1	5	0	1	16	3	0
N.Y., New York (part of New York City)	250	43	1	0	8	37	8	8	0	2	36	0
N.Y., Erie (Buffalo)	125	52	1	0	2	30	9	6	3	1	48	1

Table 2. (Cont.)

Percentage of total defendants by amount of bail set

State, County (city)	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 or more	No bail set†	Own recognizance
Ohio, Cuyahoga (Cleveland)	145	52	1	1	16	51	4	13	9	1	4	0
Ohio, Hamilton (Cincinnati)	151	44	0	1	17	70	4	3	1	0	3	0
Okla., Oklahoma (Oklahoma City)	79	37	0	0	0	62	15	10	1	0	12	0
Ore., Multnomah (Portland)	80	35	0	0	6	42	25	18	6	0	3	0
Pa., Philadelphia	246	86	0	35	48	0	0	1	0	0	5	0
R.I., Providence	82	37	1	1	9	72	6	6	1	0	3	0
Tenn., Shelby (Memphis)	64	46	0	29	6	56	0	5	2	0	3	0
Texas, Harris (Houston)	244	at least 55††	0	0	14	74	2	4	1	0	5	0
Wash., King (Seattle)	148	at least 36††	8	8	12	11	36	5	1	0	19	1
Wis., Milwaukee	110	39	0	4	17	58	1	9	1	0	4	5
Median		47										

*Large counties are defined as those having 400,000 or more population in 1960. The following counties are omitted from this table to save space, but are included in computing the median: Contra Costa (Richmond) and San Diego, Cal.; New Haven, Conn.; Macomb, Mich.; Queens, N.Y.; Montgomery (Norristown), Pa. A complete table is available from the author on request.

†This may include some cases where no data were available.

††Based on incomplete data. King County is omitted in computing the median.

Table 3. Original amount of bail set in felony cases,
medium counties, 1962*

Percentage of total defendants by amount of bail set

State, County (city)	Population in thousands	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 or more	No bail set†	Own recognizance
Ark., Pulaski (Little Rock)	243	49	29	0	2	49	36	4	6	0	0	2	0
Cal., Tulare (Dinuba)	168	50	30	0	0	4	63	18	10	2	0	0	2
Colo., Jefferson (Arvada)	128	20	70	0	0	0	53	32	11	0	5	0	0
Ill., Will (Joliet)	192	20	39	0	0	0	6	11	67	6	6	6	0
Ind., Elkhart††	107	22	59	0	0	0	29	67	0	0	0	5	0
Iowa, Polk (Des Moines)	266	79	68	10	3	34	34	13	6	0	0	0	0
Kan., Sedgwick (Wichita)	343	79	51	0	0	0	64	10	12	9	4	1	0
Mich., Kent††† (Grand Rapids)	188	20	45	0	5	35	55	0	5	0	0	0	0
Mich., Kent†† (Grand Rapids)	175	60	49	2	12	24	51	3	2	2	2	2	2
Minn., St. Louis (Duluth)	232	46	45	4	0	28	52	4	7	2	0	2	0
Nev., Clark	127	49	49	0	4	18	57	4	6	6	2	2	0
N.H., Hillsboro (Manchester)	178	46	35	17	10	17	38	0	7	0	0	12	0
N.J., Ocean (Toms River)	108	50	55	6	2	23	35	0	13	6	2	13	0
N.M., Bernalillo (Albuquerque)	262	50	58	0	0	6	74	2	10	2	0	6	0
Ohio, Columbiana (East Liverpool)	107	20	60	5	0	15	60	5	5	10	0	0	0
Okla., Tulsa	346	50	49	0	0	0	63	7	10	2	0	17	0
Tenn., Knox (Knoxville)	251	67	47	0	3	22	49	12	9	0	0	5	0

Table 3. (Cont.)

Percentage of total defendants by amount of bail set

State, County (city)	Population in thousands	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 or more	No bail set†	Own recognizance
Texas, Travis (Austin)	212	50	70	0	0	0	80	8	4	4	0	4	0
Utah, Salt Lake	383	43	92	0	0	2	84	2	7	2	0	2	0
Median			49										

*Medium counties are defined as those with a population of 101,000 to 400,000 in 1960. The following counties in this group are omitted from the table to save space, but are included in computing the median: El Paso (Colorado Springs) and Pueblo, Colo.; Peoria and DuPage (Wheaton), Ill.; Scott (Davenport), Iowa; Shawnee (Topeka), Kan. A complete table is available from the author on request.

†This may include some cases where no data were available.

††Superior court

†††Circuit court

support this theory. The four medium sized counties with the *highest* percentage of defendants released on bail were:

County	% of defendants released on bail	% of defendants according to amounts of bail set		No bail set
		Under \$3000	\$3000 or more	
Salt Lake, Utah	92	86	11	2
Jefferson, Colo.	70	53	48	0
Travis, Texas	70	80	16	4
Polk, Iowa	68	81	19	0

The bail amount figures for Jefferson County do not correspond with the other counties. A check of census data reveals that median family income for Jefferson County was 7202 dollars, while the corresponding figure for the other counties was: Salt Lake, 6265 dollars; Travis, 5058 dollars; and Polk, 6464 dollars.⁹ What appears to be excessive bail elsewhere may well be reasonable in Jefferson because of this higher median income.

Applying this same analysis to the four counties in Table 3

9. See U. S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK 43, 123, 373, 383 (1962). All figures for median family income in 1959 as reported in the 1960 census. For Anchorage the figure is for the election district rather than the judicial district, but the population is the same for both.

Table 4. Original amount of bail set in felony cases,
small counties, 1962*

Percentage of total defendants by original amount of bail set

State, County (city)	Population in thousands	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 and over	No bail set†	Own recognizance
Alaska, Anchorage	83	49	72	2	15	10	17	12	27	15	2	0	0
Ariz., Coconino (Flagstaff)	42	50	39	2	13	33	43	2	7	0	0	0	0
Ark., Crittenden (West Memphis)	47	40	35	0	3	22	44	3	17	3	0	8	0
Cal., Shasta (Redding)	59	50	24	0	0	6	42	8	30	8	6	0	0
Colo., Delta	16	19	11	0	0	5	89	0	5	0	0	0	0
Ga., Catoosa	21	16	94	0	0	13	63	0	19	0	0	6	0
Idaho, Ada (Boise)	93	45	36	0	2	13	47	2	29	4	0	2	0
Ill., Piatt	15	6	60	0	0	0	83	17	0	0	0	0	0
Ind., Porter†† (Valparaiso)	60	13	45	0	0	8	54	23	0	0	0	15	0
Iowa, Des Moines (Burlington)	45	20	35	10	0	25	60	0	0	0	0	5	0
Kan., Brown	13	14	7	0	0	0	64	29	7	0	0	0	0
La., Tangipahoa (Hammond)	59	48	60	0	10	38	31	0	0	0	0	21	0
Mich., Livingston (Howell)	38	19	32	0	0	5	47	16	26	0	0	0	5
Minn., Dakota (Hastings)	78	19	42	0	5	21	42	0	26	0	0	5	0
Mo., Jasper (Joplin)	79	50	58	0	0	4	69	7	16	4	0	0	0
Mo., Putnam	7	12	64	0	0	0	92	0	0	8	0	0	0
Mont., Cascade (Great Falls)	73	19	11	6	0	35	53	0	0	0	0	6	0
Neb., Dodge (Fremont)	32	20	16	0	0	30	40	10	15	5	0	0	0

Table 4. (Cont.)

Percentage of total defendants by original amount of bail set

State, County (city)	Population in thousands	Total sample of felony defendants	% of defendants released on bail	Less than \$250	\$250-499	\$500-999	\$1000-2999	\$3000-4999	\$5000-9999	\$10,000-14,999	\$15,000 and over	No bail set†	Own recognizance
N.H., Merrimack (Concord)	68	78	55	6	0	35	53	0	0	0	0	6	0
N.M., Chaves (Roswell)	58	50	33	0	0	2	61	16	8	4	2	6	0
N.Y., Otsego (Oneonta)	52	20	60	0	11	33	28	0	17	0	0	11	0
Okla., Pontotoc (Ada)	28	18	72	0	0	6	78	11	0	6	0	0	0
Ore., Lake	7	10	40	0	0	10	30	10	30	10	0	10	0
S.D., Minnehaha (Sioux Falls)	86	19	62	0	0	5	84	0	0	0	5	5	0
Tenn., Bradley (Cleveland)	38	18	44	0	0	35	53	0	6	6	0	0	0
Vt., Rutland	47	12	17	0	0	25	50	0	17	0	0	8	0
Va., Princess Anne (Virginia Beach)	77	50	47	0	2	24	41	5	7	0	0	20	0
Wis., Douglas (Superior)	45	19	37	0	5	21	58	0	11	0	0	0	5
Wyo., Natrona (Casper)	50	20	40	5	15	30	40	5	0	5	0	0	0
Median			39										

*Small counties are defined as those having a population of 100,000 or less in 1960. The following counties are omitted from the table to save space, but are included in computing the median: Bingham (Blackfoot) and Nez Perce (Lewiston), Idaho; Clarke, Iowa; Butler (El Dorado) and Leavenworth, Kan.; Freeborn (Albert Lea), Minn.; Audrain (Mexico) and Putnam, Mo.; Luna, N.M.; Chittenden (Burlington), Vt.; Floyd, Va.; Albany, Wyo.

A complete table is available from the author on request.

†This may include some cases where no data were available.

††Circuit court only.

with the *lowest* rate of release on bail, the figures were as follows:

County	% of defendants released on bail	% of defendants according to amounts of bail set		No bail set	Median family income ¹⁰
		Under \$3000	\$3000 or more		
Pulaski, Ark.	29	87	10	2	\$4935
Tulare, Cal.	30	69*	30	0	4815
Hillsboro, N.H.	35	82	7	12	5885
Will, Ill.	39	6	90	6	6731

*Includes 2 per cent of defendants released on own recognizance.

In these counties bail is relatively low in all but Will, where the relatively high bail is perhaps explained by the influence of adjoining Cook County. Yet in the other counties even the relatively low bail was excessive for two out of three defendants. Not only are the median family incomes in Pulaski and Tulare Counties the lowest among the eight counties considered in this population group, but most of the individual defendants were probably below the median. Thus, even 1000 dollars bail may be excessive if the defendant's resources are so limited that he cannot obtain a surety.¹¹

The figures for the small counties resemble those of the medium counties; the four small counties with most frequent release on bail were:

County	% of defendants released on bail	% of defendants according to amounts of bail set		No bail set	Median family income ¹²
		Under \$3000	\$3000 or more		
Catoosa, Ga.	94	76	19	6	\$4995
Anchorage, Alaska	72	42	54	0	8120
Pontotoc, Okla.	72	84	17	0	3874
Putnam, Mo.	64	92	8	0	2355

10. See *id.* at 33, 43, 103, 243.

11. As a sheriff from Massachusetts said at the National Conference on Bail and Criminal Justice:

High bail, or excessive bail, is the amount of bail that you can't make. I have been in a situation that happened last year. . . . I had an 18 year old boy who did 42 days in jail because he could not post \$100 bail. If you ask what high bail is to that boy, \$100 bail is high bail for he could not meet it.

NATIONAL CONFERENCE ON BAIL AND CRIMINAL JUSTICE, PROCEEDINGS 185 (1965).

12. See U. S. DEP'T OF COMMERCE, COUNTY AND CITY DATA BOOK 23, 63, 213, 303 (1962).

For all of the counties except Anchorage, it appears that low bail permitted a high rate of release despite relatively low family income. In Anchorage, although bail was considerably higher, the rate of release was also high, probably because of the extremely high family income.

For the small counties with the *lowest* rate of release the figures were:

County	% of defendants released on bail	% of defendants according to amounts of bail set		No bail set	Median family income ¹³
		Under \$3000	\$3000 or more		
Brown, Kan.	7	64	36	0	\$3614
Delta, Colo.	11	94	5	0	3623
Cascade, Mont.	11	94	0	6	6032
Rutland, Vt.	17	75	17	8	4873

For Brown County the low release rate is apparently a combination of relatively high bail and low income. For Delta and Rutland Counties the low income is evidently the chief factor. Cascade County is hardest to explain; even though bail was fairly low, it was too high for most of the defendants. Evidently they did not share in the rather high family income reported for that county.

Besides the amount at which bail is originally set and the financial resources of the defendant, a third determinant of his release is the extent to which he can get bail reduced. This factor is intimately related to the system of providing counsel for the poor, for only if counsel is provided soon after arrest can he be of much help in getting bail reduced.¹⁴ Table 5 shows extremely wide variations in change of bail, ranging from lows of zero in Buffalo and Quincy, and 1 per cent in Newark, to highs of 25 per cent in Chicago, Cincinnati, and Queens and a surprising 65 per cent in Kansas City. The median, however, was only 8 per cent. The figures suggest that at least in those counties above the median percentage of reductions, the original bail may have been too high. To the extent this is correct, the table must understate the problem, since many defendants, especially those without counsel, do not know of their right to seek a reduction in bail. Counties reporting a low frequency of bail reduction may nonetheless have a high bail problem if counsel for indigent persons is not appointed until after the indictment or information has been filed, which

13. See *id.* at 43, 123, 223, 383.

14. For survey findings on when counsel is appointed, see SILVERSTEIN, *op. cit.* *supra* note 1, at 75-87, 253-67.

could be several weeks or months after the date of arrest. Another factor inhibiting requests for reduction in bail is the use of a "bail test" to determine eligibility for court provided counsel.¹⁵

If the number of bail reductions provides at least a rough measurement of the extent of excessive bail, then Table 6 indicates that the problem is worse in the middle-sized counties than in the large counties. In the 26 middle-sized counties bail reduction figures range from zero to 39 per cent. The median is 13 per cent, somewhat higher than the 8 per cent median for the large counties.

Table 5. Change of bail in felony cases, large counties, 1962

State, county (city)	No. of cases where data available	No. of cases where bail reduced	% of cases where bail reduced	% of total defendants re- leased on bail
Cal., Contra Costa				
(Richmond)	50	6	12	46
Los Angeles	247	17	7	41
San Diego	102	6	6	35
San Francisco	147	8	5	43
Colo., Denver	50	8	16	55
Conn., Hartford	44	6	14	61
New Haven	49	2	4	52
Fla., Dade (Miami)	197	3	2	29
Hawaii, Honolulu	50	2	4	62
Ill., Cook (Chicago)	245	62	25	25
Ind., Marion				
(Indianapolis)	104	13	13	34
Ky., Jefferson				
(Louisville)	82	15	18	70
La., Orleans				
(New Orleans)	194	39	20	56
Mass., Norfolk				
(Quincy)	65	0	0	0
Worcester	39	10	26	69
Mich., Macomb				
(Warren)	73	4	5	47
Wayne				
(Detroit only)	188	15	8	52
Wayne (Out- side Detroit)	38	6	16	64

15. SILVERSTEIN, *op. cit. supra* note 1, at 107-08.

Table 5. (Cont.)

State, county (city)	No. of cases where data available	No. of cases where bail reduced	% of cases where bail reduced	% of total defendants re- leased on bail
Minn., Hennepin				
(Minneapolis)	79	2	3	29
Ramsey (St. Paul)	43	10	23	26
Mo., Jackson				
(Kansas City)	72	47	65	30
St. Louis City	132	4	3	40
St. Louis (Clayton)	38	1	3	50
N.J., Essex (Newark)	107	1	1	58
Union (Elizabeth)	73	2	3	55
N.Y., Erie (Buffalo)	124	0	0	52
New York (part of New York City)	243	56	23	43
Queens (part of New York City)	79	20	25	47
Ohio, Cuyahoga				
(Cleveland)	140	14	10	52
Franklin				
(Columbus)	102	10	10	41
Hamilton				
(Cincinnati)	147	36	25	44
Summit (Akron)	76	1	1	51
Okla., Oklahoma				
(Oklahoma City)	70	6	9	37
Ore., Multnomah				
(Portland)	70	15	21	35
Pa., Montgomery				
(Norristown)	132	2	2	49
Philadelphia	101	2	2	86
R.I., Providence	76	15	20	37
Tenn., Shelby				
(Memphis)	61	2	3	46
Texas, Harris				
(Houston)	241	9	4	55 at least
Wash., King (Seattle)	139	25	18	36 at least
Wis., Milwaukee	92	5	5	39
Median			8	

Table 6. Change of bail in felony cases, medium counties, 1962*

State, county	No. of cases where data available	No. of cases where bail reduced	% of cases where bail reduced	% of total defendants re- leased on bail
Ark., Pulaski	46	8	17	29
Cal., Tulare	49	9	18	30
Colo., Jefferson	18	6	33	70
Colo., Pueblo	20	2	10	45
Ill., Peoria	18	4	22	53
Ill., Sangamon	50	1	2	20
Ill., Will	14	1	7	39
Iowa, Scott	52	3	6	60
Kan., Sedgwick	78	16	21	51
Kan., Shawnee	75	29	39	52
Mich., Kent†	20	1	5	49
Mich., Kent††	59	4	7	45
Minn., St. Louis	43	16	37	45
Nev., Clark	49	10	20	49
N.H., Hillsboro	43	4	9	35
N.J., Camden	64	16	25	79
N.J., Ocean	48	10	21	55
N.M., Bernalillo	49	21	43	58
Ohio, Columbiana	20	1	5	60
Tenn., Knox	60	9	15	47
Texas, Travis	48	3	6	70
Utah, Salt Lake	40	7	18	92
Wash., Yakima	43	3	11	no data
Median			13	

*The following counties, where no defendants were released on bail, are omitted from this table to save space, but they are included in computing the median: El Paso, Colo.; Elkhart (superior court only), Ind.; Cumberland, Pa. A complete table is available from the author on request.

†Circuit court

††Superior court

Table 7. Change of bail in felony cases, small counties, 1962*

State, county	No. of cases where data available	No. of cases where bail reduced	% of cases where bail reduced	% of total defendants re- leased on bail
Alaska, Anchorage	40	6	15	72
Ariz., Coconino	45	2	4	31
Ark., Crittenden	38	4	11	35
Calif., Shasta	50	7	14	24
Colo., Delta	17	2	12	11
Fla., Jackson	39	1	3	33
Ga., Catoosa	16	1	6	94
Idaho, Ada	45	5	11	36
Idaho, Bingham	21	4	19	48
Idaho, Nez Perce	18	1	6	16
Iowa, Clarke	15	1	7	53
Iowa, Des Moines	19	9	47	35
Kan., Butler	49	3	6	37
Kan., Leavenworth	23	2	9	39
Mich., Livingston	19	3	16	32
Minn., Dakota	19	4	21	42
Minn., Freeborn	19	1	5	42
Mo., Audrain	46	1	2	39
Mont., Cascade	20	1	5	11
Mont., Yellowstone	46	3	28	24
Neb., Dodge	19	1	5	16
N.H., Merrimack	18	1	6	55
N.M., Chaves	49	18	37	33
N.D., Cass	22	3	14	17
N.D., Burleigh	34	3	8	26
Okla., Pontotoc	16	1	6	72
Pa., Wyoming	16	3	19	38
S.D., Minnehaha	18	1	6	62
Tenn., Bradley	15	4	27	44
Tenn., Henry	7	1	14	†
Utah, Cache	16	1	6	65††
Wash., Kitsap	46	4	9	†
Wis., Douglas	17	3	18	37
Wyo., Albany	19	1	5	20
Wyo., Natrona	20	2	10	40
Median			6	

*The following counties, where no defendants were released on bail, are omitted from this table to save space, but they are included in computing the median: Union and Washington, Ark.; Porter (circuit court only), Ind.;

Brown, Kan.; Allegany, Md.; Luna, N.M.; Otsego, N.Y.; Lake, Ore.; Ft. Bend and Comal, Texas; Chittenden, Vt.; Bath and Floyd, Va.; Kittitas, Wash.; Raleigh, W.Va.; Clark, Wis. A complete table is available from the author on request.

†No data available.

††Minimum figure based on incomplete data.

Table 8. Time between arrest and release on bail in felony cases, large counties, 1962*

Percentage of released defendants by days from arrest to release

State, county (city)	Total sample of felony defendants	% of defendants released on bail	Same day	1 day	2-3 days	4-6 days	7-13 days	14-29 days	30-59 days	60-119 days	120-179 days	180 or more
Cal., Los Angeles	252	41	15	9	7	11	21	17	13	5	1	0
Cal., San Francisco	150	43	1	0	0	0	15	23	37	17	2	5
Conn., Hartford	50	61	0	42	4	4	12	15	19	4	0	0
Hawaii, Honolulu	50	62	25	0	0	29	21	18	7	0	0	0
Ill., Cook	249	25	0	5	3	3	3	13	35	25	10	5
Mich., Wayne (Detroit only)	188	52	13	29	27	7	9	11	2	1	0	0
Minn., Hennepin (Minneapolis)	80	29	5	5	11	16	21	32	5	0	5	0
Mo., Jackson (Kansas City)	80	30	5	5	0	0	24	29	29	10	0	0
Mo., St. Louis City	144	40	2	0	0	8	35	21	23	6	0	4
N.J., Union (Elizabeth)	78	47	0	0	8	11	5	3	13	5	8	0
N.Y., New York (part of New York City)	250	43	13	14	16	13	15	16	6	6	1	0
N.Y., Erie (Buffalo)	125	52	2	5	7	4	9	28	21	19	5	0
Pa., Montgomery (Norristown)	136	49	27	11	14	14	11	8	3	8	2	2
Tenn., Shelby (Memphis)	64	46	62	7	3	7	7	10	0	3	0	0
Wis., Milwaukee	110	39	69	0	7	3	10	0	3	0	0	7
Median			9									

*The following counties are omitted from this table to save space but are included in computing the median: Contra Costa and San Diego, Cal.; New Haven, Conn.; Queens, N.Y. A complete table is available from the author on request.

Table 10. Time between arrest and release on bail in felony cases, small counties, 1962*

Percentage of released defendants by days from arrest to release

State, county	Total sample of felony defendants	% of defendants released on bail	Same day	1 day	2-3 days	4-6 days	7-13 days	14-29 days	30-59 days	60-119 days	120-179 days	180 days or more
Ark., Crittenden	40	35	73	0	9	0	9	9	0	0	0	0
Cal., Shasta	50	24	10	30	10	10	10	10	20	0	0	0
Ga., Catoosa	16	94	80	13	0	7	0	0	0	0	0	0
Idaho, Ada	45	36	25	0	19	19	6	6	6	13	6	0
Iowa, Des Moines	20	35	14	0	0	14	43	14	14	0	0	0
Kan., Leavenworth	23	39	44	11	0	11	11	22	0	0	0	0
La., Tangipahoa	48	60	35	12	12	8	15	15	0	4	0	0
Minn., Dakota	19	42	43	0	0	14	29	0	14	0	0	0
Mo., Jasper	50	58	14	0	5	14	24	38	5	0	0	0
Mont., Yellowstone	50	24	18	18	9	0	27	18	0	9	0	0
N.M., Chaves	50	33	23	23	31	8	8	0	8	0	0	0
Pa., Crawford	37	22	63	13	0	13	0	0	0	0	0	13
S.C., Hampton	17	49	17	8	38	4	4	4	8	8	4	4
Tenn., Bradley	18	44	0	43	14	29	14	0	0	0	0	0
Vt., Chittenden	25	28	29	29	0	14	14	14	0	0	0	0
Va., Floyd	17	59	80	10	0	0	0	0	0	0	0	10
Va., Princess Anne	50	47	9	22	9	13	26	9	9	0	4	0
Wis., Douglas	19	37	33	17	17	0	17	0	17	0	0	0
Wyo., Natrona	20	40	29	14	29	14	0	12	0	0	0	0
Median			29									

*The following counties are omitted from this table to save space but are taken into account in computing the median: Washington, Ark.; Bingham, Idaho; Freeborn, Minn.; Audrain, Mo.; Orleans, Vt.; Bristol City, Va. A complete table is available from the author on request.

Table 7 indicates that of the 52 small counties, 17 have no reductions in bail, while another 18 have 2 per cent to 9 per cent. In the remaining 17 however, the figures range from 10 per cent to 47 per cent. The median for the small counties is 6 per cent, but again the table probably understates the high bail problem. At the time of the survey (1962-63) most small counties did not provide counsel for indigent defendants until after the indictment or information was filed. In many counties, counsel was not pro-

vided until arraignment on the indictment or information. This is rather late to move for reduction of bail.

Still other factors besides those previously discussed affect the proportion of defendants who make bail. One of these is the length of time between arrest and final disposition of the case. The longer the time interval, the more likely the defendant will be released. Another factor is the particular practices of the local bonding agent and his principal. Also release on recognizance or a cash deposit in lieu of bond greatly affects the percentage of defendants released.¹⁶

From data presented in this section we may conclude that high bail prevents release of a considerable number of defendants in counties of all sizes. In numbers of defendants affected, the problem is most acute in large cities, but some of the worst examples of excessive bail are found in medium and small counties, especially those located in remote rural areas. The dollar amount of bail is not the only factor to weigh in determining the existence of excessive bail; one must also consider the financial resources of defendants, availability of bail reduction, length of time between arrest and final disposition, and local bonding and court practices respecting bail.

E. DOES THE AMOUNT OF BAIL DELAY RELEASE?

The time between the date of arrest and the date of release on bail is shown in Tables 8 through 10. The total and the percentage of defendants released on bail is shown for each county, followed by a detailed analysis showing the percentage of released defendants classified by the length of their detention. Again we find wide disparities within each class of counties. Among the largest counties detention was shortest in Milwaukee, where 69 per cent of the defendants who made bail were released the day they were arrested, and in Memphis, where the figure was 62 per cent. By contrast, in Chicago, Elizabeth, and Hartford not a single defendant was released on the day of arrest, and in San

16. See generally FREED & WALD, *BAIL IN THE UNITED STATES*: 1964 56-80; *Hearings on Federal Bail Procedures Before the Subcommittee on Constitutional Rights and the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary*, 88th Cong., 2d Sess. (1965); *Hearings Before the Subcommittee on Constitutional Rights and the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary*, 89th Cong., 1st Sess. (1964); Conference on Bail and Indigency, *Proceedings*, 1965 U. ILL. L.F. 1-56; McCarthy & Wahl, *The District of Columbia Bail Project*, 53 GEO. L.J. 675 (1965).

Francisco only 1 per cent of the defendants who made bail were released that day.

Comparing Table 8 with Table 2, we find that early release is associated with relatively low original bail. In Milwaukee bail was less than 3000 dollars in 79 per cent of the sample cases, and in Memphis the figure was 91 per cent. At the other end of the scale, bail of less than 3000 dollars was less frequent: Chicago, 12 per cent; Elizabeth, 47 per cent; Hartford, 63 per cent; San Francisco, 85 per cent. The results for Milwaukee, Memphis, and Chicago are consistent with the proposition that low bail speeds release and high bail delays it. The figures for Hartford and Elizabeth are equivocal, however, and the one for San Francisco supports the opposite proposition. Therefore, factors other than the amount of bail must affect the time of release, at least in some counties. The most important of these factors is the local system for administration of bail, including practices of bondsmen and their principals. Other factors were discussed above. Tables 9 and 10 show that release on bail occurred considerably earlier in middle-sized and small counties than in large counties. Among the middle-sized counties the median figure for release the same day was 32 per cent, and among the small counties, 29 percent, whereas in large counties it was only 8 per cent. This comparison strongly suggests that the large volume of cases being handled in metropolitan courts may itself delay release on bail.

In the medium and small counties there appears to be little relation between the original amount of bail and delay in release. The counties with the highest and lowest rates of release on the date of arrest, were:

County	% of defendants released on day of arrest (from Table 9)	% of defendants according to amounts of bail set (from Table 2)		No bail set
		Under \$3000	\$3000 or more	
<u>Highest</u>				
Ocean, N.J.	57	66	21	13
Travis, Texas	53	80	16	4
Pueblo, Colo.	50	85	10	5
<u>Lowest</u>				
St. Louis, Minn.	5	84	13	2
Tulsa, Okla.	5	70	12	17
Pulaski, Ark.	6	87	10	2

There is no significant difference between the two groups in the amount at which bail was set.

The results for the small counties were similar to those found in the medium counties:¹⁷

County	% of defendants released on day of arrest (from Table 10)	% of defendants according to amounts of bail set (from Table 4)		No bail set
		Under \$3000	\$3000 or more	
<u>Highest</u>				
Catoosa, Ga.	80	76	19	6
Floyd, Va.	80	88*	0	12
Crittenden, Ark.	73	69	23	8
<u>Lowest</u>				
Bradley, Tenn.	0	88	12	0
Princess Anne, Va.	9	67	12	20
Shasta, Cal.	10	48	52	0

*Includes defendants released on own recognizance

Here again there is no significant difference in the amount of bail between the two groups of counties except that the relatively high bail in Shasta may have caused some of the delay in that county.

It is difficult to draw any firm conclusions from the data presented in this section. Delay in release appears more serious in large counties than in medium and small ones, although there are exceptions in each group. The delay in large counties appears to be caused by a combination of at least two factors — the original amount of bail and the large volume of cases. In medium and small counties there is little evidence of any significant relationship between the original amount of bail and the delay in release.

II. THE CONSTITUTIONAL QUESTIONS

A. DUE PROCESS — RIGHT TO COUNSEL

The Supreme Court has made it quite clear that due process includes the right to counsel in serious criminal cases.¹⁸ To the extent that any of the practices described above interferes with that right, it may violate the due process clause. The "bail test"

17. Only those counties are included where data was available for both Tables 10 and 4.

18. See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

of eligibility for court appointed counsel seems particularly vulnerable in this respect. Use of this test conditions the exercise of one constitutional right on the waiver of another. Making the right to counsel and the right to meet bail alternative rights raises a serious constitutional problem. Also, insofar as excessive bail uses up funds which would otherwise be available to employ counsel, one's right to counsel may be further impaired. A more attenuated argument is that the right to counsel includes the right of the defendant to assist counsel in preparing a defense, and that by delaying or preventing release, excessive bail interferes with this right and places the incarcerated defendant at a disadvantage solely because of his poverty.

B. DUE PROCESS — EXCESSIVE BAIL

The Supreme Court has not stated whether the excessive bail provision of the eighth amendment is incorporated into the fourteenth amendment. In other aspects of criminal procedure, however, the trend of recent Supreme Court decisions is to apply federal standards to the states, by incorporating the procedural guarantees of the Bill of Rights into the fourteenth amendment. It seems a safe prediction that the excessive bail provision will be incorporated too. In addition to federal requirements, 49 state constitutions prohibit excessive bail or declare that it ought not be required, while 40 states provide all persons a right to bail by sufficient sureties except for capital offenses where the proof is evident or the presumption great.¹⁹ There is considerable evidence that very high bail is often required in many counties. It is to be hoped that the constitutionality of these high amounts of bail will soon be judicially determined.

C. EQUAL PROTECTION

In *Griffin v. Illinois*²⁰ the Supreme Court ruled that the equal protection clause requires the state to provide a trial transcript or the equivalent to an indigent who wants to appeal his conviction. Absent a transcript his opportunity would not be equal to that of the appellant who can afford one. More recently the Court recognized the indigent's right to counsel for the first appeal as a

19. See LEGISLATIVE DRAFTING RESEARCH FUND OF COLUMBIA UNIVERSITY, INDEX DIGEST OF STATE CONSTITUTIONS 48 (2d ed. 1959). The only state that does not have the excessive bail provision is Illinois, but court decisions there reach the same result under a "sufficient sureties" provision. *People v. Ogilvie* (1964), reported only in 53 ILL. B.J. 683 (1965); *People v. Snow*, 340 Ill. 464, 173 N.E. 8 (1930).

20. 351 U.S. 12 (1956).

matter of right.²¹ Some of the bail practices described above may violate the expanding equal protection doctrine represented by these two decisions. The bail test to determine eligibility for court provided counsel may infringe equal protection by denying counsel to the indigent person whose friend or relative acts as surety, while granting counsel to the indigent who remains in jail.

A more difficult question is presented by discrepancies in bail for the same crime from one county to another. In *Salsburg v. Maryland*²² the Supreme Court allowed a state legislature to authorize different rules of evidence for gambling prosecutions in different counties. Should different amounts of bail for similar cases in different counties be acceptable also? One distinction in the bail case is the absence of legislation, but this may well be immaterial. The crucial question in an equal protection case is whether there is state action, not whether it happens to derive from legislative or judicial activity. The policy of the *Salsburg* decision, as well as earlier decisions on which it relied, is for each state to have considerable latitude in providing variations in criminal procedure within different counties. Since the 1954 *Salsburg* case, however, the Supreme Court has developed a strong supervision of state criminal cases. *Gideon v. Wainwright*²³ is a prime example, but there are numerous others.²⁴ Perhaps this strong policy requires sacrificing the *Salsburg* policy. Whether the *Salsburg* doctrine should be followed in the bail case, in view of these more recent developments, seems questionable. Apart from the federal constitutional question, wide diversity from county to county may violate state constitutional provisions relating to civil rights.²⁵

III. RECOMMENDATIONS

1. A uniform system of bail administration should be established in each state, with greater judicial supervision than pres-

21. *Douglas v. California*, 372 U.S. 353 (1963).

22. 346 U.S. 545 (1954).

23. 372 U.S. 335 (1963).

24. *Griffin v. California*, 380 U.S. 609 (1965) (comment on defendant's failure to testify); *Pointer v. Texas*, 380 U.S. 400 (1965) (lack of opportunity for cross-examination at preliminary hearing precludes admissibility at trial of statement made at preliminary hearing); *Beck v. Ohio*, 379 U.S. 89 (1964) (what constitutes probable cause for arrest); *Escobedo v. Illinois*, 378 U.S. 478 (1964) (admissibility of confession obtained after denial of request for counsel); *Jackson v. Denno*, 378 U.S. 368 (1964) (inadequate procedure to determine voluntariness of confession); *Mapp v. Ohio*, 367 U.S. 643 (1961) (search and seizure).

25. See LEGISLATIVE DRAFTING RESEARCH FUND OF COLUMBIA UNIVERSITY, *op. cit. supra* note 19, at 93.

ently exists. If bail schedules are used, the amounts should be relatively uniform throughout the state, and practice respecting their use should be as nearly uniform as is feasible. Judicial supervision is especially needed in remote rural counties, where some of the more extreme examples of high bail were reported.

2. Further study and field research are needed at the state and local level to ascertain current bail practices. This should be a prime subject for bar associations, judicial councils and conferences, and law school researchers. Alternatives to bail, such as release on recognizance, should be considered.

3. National and regional conferences on bail administration and related problems have already been held. Additional meetings of this kind, proposing concrete programs for the elimination of excessive bail and for the equalization of bail, should be held in the future.

APPENDIX 1

Information recorded below is taken from Forms I and II of the American Bar Foundation survey, as gathered by the state reporters. All percentages of defendants released refer to felony cases only. Eight representative states were selected, but data from other states is available on request from the author. See footnote 1 supra for further information about the survey.

STATE AND COUNTY

BAIL PROCEDURES

(city)

New York, Clinton
(Plattsburgh)

The magistrate determines the amount of bail at first arraignment, often on recommendation of district attorney. Magistrate will generally ask defendant if he wishes bail to be set. If property is offered, defendant is usually told that magistrate prefers to have bail set in county court. This tends to encourage waiver of preliminary examinations. About 60% to 70% of defendants who are released have surety bonds signed by relatives or friends, 25% make a deposit of cash, etc., and 5% are released on own recognizance.

New York, Erie
(Buffalo)

Bail is set by the magistrate at first arraignment, usually upon a recommendation of the district attorney according to a schedule. District attorney estimates that 15% of released defendants employ professional bondsmen, 60% have a bond from a relative or friend, 15% deposit cash, and 10% are released on own recognizance.

New York, New York

Bail is set by the magistrate (criminal court) at first arraignment. The district attorney often makes recommendations which may influence the magistrate's decision. A bail schedule is not used. In capital cases, or where the victim is near death, or where the defendant has certain prior convictions, the criminal court has no authority to fix bail, but application must be made to the supreme court. N.Y. CODE CRIM. PROC. § 552 (1965).

New York, Otsego
(Oneonta)

Magistrates set bail whenever requested, not necessarily at first arraignment. The Oneonta magistrate and 4 of the 48 other magistrates in the county are lawyers. The recommendation of the district attorney is usually followed, although no schedule is used. According to the district attorney, 4% of those released have bond from a professional surety, 70% from a friend or relative, 25% deposit cash, and 1% are released on own recognizance.

Virginia, City of
Bristol

The clerk of municipal court, who is not a lawyer, serves as magistrate during court hours and sets bail. At other times the justice of the peace, who is also a layman, performs this function. No bail schedule is used, but minimum felony bond is \$2,000 property or \$1,000 cash. The municipal judge estimates that 25% of released defendants have bonds from professional sureties, 70% have bonds from relatives or friends, and 5% deposit cash.

Virginia, City of
Roanoke

After arrest, the accused is taken to the docketing office (police headquarters) and placed in detention. Bail, if desired, is granted by either a docketing officer (a policeman who can set only cash bail) or by a bail commissioner who is a lawyer. In either instance the amount of bail is based on a schedule prepared by the municipal judge in collaboration with the commonwealth's attorney and bail commissioner. For misdemeanors the amount ranges from \$50 to \$500. For felonies the minimum is \$1,000. The bail commissioner estimates that 95% of those released have a relative or friend as surety.

Virginia, Henry

Justices of peace, who are not lawyers, usually set bail from a schedule. In very serious cases they may commit an accused

to jail pending the recommendations of the county judge. Typical amounts are: traffic misdemeanor \$750 maximum; aggravated misdemeanor \$1,000 maximum; simple felony \$1,000; capital felony \$2,500 for white persons or \$1,500 for Negroes. The county judge estimates that of those released, 40% have professional surety, 40% have personal surety, and 20% deposit cash.

Virginia, Princess
Anne (Virginia Beach)

Bail is set by the bail commissioner or a judge of municipal court. The very general rule of thumb is that bail is \$1,000 for a felony with a maximum punishment of 1 to 10 years, and \$2,000 if the maximum is more than 10 years. For lesser felonies bond is often set at \$500. The clerk of municipal court estimates that 90% of those released have professional sureties.

Georgia, Cobb
(Marietta)

A bail schedule is used. Bail for capital felonies, if bailable, is set at \$5,000 or up, noncapital felonies is \$500 to \$5,000 depending on the offense. Bail for abandonment is \$300 for the first child and \$100 for each additional child. Worthless checks and driving under influence require bail of \$200, and other traffic misdemeanors \$100. The judge and the solicitor general estimate that 75% of defendants are released on professional surety bond, 24% on bond of a friend or relative and 1% on own recognizance.

Georgia, Fulton
(Atlanta)

A bail schedule is used. Minimum bail is \$1,000 on noncapital felonies, and up to \$5,000 depending on prior record. If bail is allowed in capital cases, it is set at a minimum of \$10,000. Estimates of source of bond are similar to Cobb County.

Georgia, Thomas
(Thomasville)

A bail schedule is used. Bail for felonies is \$500 to \$1,000 depending on gravity, for misdemeanors \$100 to \$200. The judge

estimates that 70% of released defendants have a bond signed by a relative or friend, 29% employ a professional bondsman, and 1% are released on own recognizance.

Ohio, Cuyahoga
(Cleveland)

The magistrate sets bail at the first arraignment. No schedule is used. One of the factors in setting bail is that jail space is limited.

Ohio, Franklin
(Columbus)

A bail schedule is used for misdemeanors but not for felonies. The clerk advises that 43% of defendants have made bond in recent years. Of these, 78% employed a professional surety, 4% had a bond from a relative or friend, 6% deposited cash, and 9% were released on own recognizance.

Ohio, Hamilton
(Cincinnati)

A bail schedule is used. Typical amounts are robbery \$1,000, breaking and entering \$1,000, crimes of violence \$1,500 to \$2,500, homicide \$5,000 to \$10,000. A docket study shows that 60% of defendants released had professional surety, 20% had a friend or relative's bond, 10% made cash deposit, and 10% were released on own recognizance.

Ohio, Pike

No bail schedule is used, and over half of those released are released on own recognizance. The balance is evenly divided between personal sureties and cash deposits; only 1% have a professional surety.

Minnesota, Freeborn
(Albert Lea)

The county attorney recommends the amount of bail, usually just above what he feels the defendant can pay. When there is no defense counsel, the county attorney's recommendation is usually followed by the magistrate. The most important factor considered in setting bond is the number of prior offenses.

Minnesota, Hennepin
(Minneapolis)

Detailed bail schedules are used by the county attorney's office, which recommends bail to the magistrate. Typical amounts are: 1st degree assault \$5,000, 1st degree burglary \$5,000, carnal knowledge (10 yrs. or older) \$1,000, carnal knowledge under 10 yrs. \$5,000, 1st degree forgery \$1,000, 1st degree grand larceny \$1,000, 1st degree manslaughter \$5,000, 1st degree murder \$10,000, rape \$5,000, 1st degree robbery \$5,000. Higher bail is recommended in aggravated situations or unusual circumstances.

Minnesota, Ramsey
(St. Paul)

A bail schedule is not used, but the county attorney always asks at least \$2,500 for a felony and \$5,000 where the defendant has a prior conviction. Some judges follow these suggestions, others will grant lower bail.

Minnesota, St. Louis
(Duluth)

A bail schedule is not used. Bail for non-violent felonies averages \$1,000; for felonies with physical violence it is about \$5,000. Rarely is bail set below \$500. The possibility of fleeing the jurisdiction will affect the amount of bail. A 1962 survey in the clerk's office shows that 43% of defendants were released on surety bond, 12% on the bond of a friend or relative, 23% on deposit of cash, etc., and 23% on own recognizance.

Texas, Harris
(Houston)

Standard bail is used for each crime. The amount for ordinary felonies, *e.g.*, theft or burglary, is \$1,000; for driving while intoxicated, \$500 to \$1,000. The district clerk's office estimates that 75% to 80% of felony bonds are by professional bondsmen.

Texas, Kerr
(Kerrville)

Bail is set by magistrates, who are not lawyers, at an amount defendant can probably make. A justice of the peace and the district clerk estimate that 90% of

those released have bond signed by a relative or friend.

Texas, Travis
(Austin)

Bail is set by magistrates, who are not lawyers. The district clerk says that most bonds are made by professional bondsmen and attorneys.

Utah, Cache
(Logan)

Bail is usually set during the first appearance before the city judge, who is a lawyer. (It is set at the same time in the other two Utah counties below.) Although no schedule is used, bail is \$1,000 to \$1,500 for most felonies. The district attorney estimates that 80% of those released have bonds from professional bonding companies, 15% from a relative or friend, and 5% are released on own recognizance.

Utah, Salt Lake
(Salt Lake City)

The county attorney sets the amount of bail on the warrant.

For first offenders bail is \$1,500 for most felonies; it is rarely reduced below \$500. A former county attorney estimates that 95% of those released have professional bondsmen.

Utah, Utah
(Provo)

For most felonies bail is \$1,000 cash bond or \$2,000 property bond. District attorney estimates that 5% of those released have bonds from professional sureties, 40% have bonds from relatives or friends, and the remainder are released on own recognizance.

California,
Riverside

There is no fixed bail schedule but three standard bails, \$1,000, \$2,500 and \$3,000, are used. A deputy district attorney recommends bail at the time of filing a complaint and this recommendation is usually followed by the magistrate.

California,
San Diego

Bail schedules are used only for misdemeanors; for felonies there is a tacit understanding as to bail amounts for particular crimes.